

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

19 3024

United States District Court		District	EASTERN DISTRICT OF PENNSYLVANIA
Name (under which you were convicted): PEDRO VELASQUEZ		Docket or Case No.: DPAE5:09 CR000155-004	
Place of Confinement: Federal Correctional Inst. Otisville, New York		Prisoner No.: 66217-066	
UNITED STATES OF AMERICA		Movant (include name under which convicted) PEDRO VELASQUEZ	

V.

a/k/a "KING P-SOLO"

### MOTION

- (a) Name and location of court which entered the judgment of conviction you are challenging: United States District Court  
Eastern District of Pennsylvania  
Philadelphia, Pennsylvania  
(b) Criminal docket or case number (if you know). DPAE5:09CR000155-004
- (a) Date of the judgment of conviction (if you know): January 4, 2012  
(b) Date of sentencing: January 4, 2012  
90 months imprisonment on counts 1, 4, 6, 7, 10, 12,
- Length of sentence: 14, 20, 22 & 34; 60 months imprisonment (consecutive)  
on count 5. Total term of 150 months imprisonment.
- Nature of crime (all counts): Count 1: Conspiracy to Participate in a  
Racketeering Enterprise; Counts 4,6,10: Conspiracy to Commit Murder  
in Aid of Racketeering; Count 7: Conspiracy to Commit Kidnapping  
in Aid of Racketeering; Counts 12,14,20,22: Distribution of  
Controlled Substances Within 1,000 Feet of Public Housing; Count  
34: Distribution of Controlled Substances; Count 5 Use/Carry a  
Firearm in Relation to a Crime of Violence (associated w/Count 4).
- (a) What was your plea? (Check one)  
(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐  
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to? A guilty plea was  
entered to additional counts 11, 13, 19, 21, & 23; however, no  
sentence was imposed on those counts because they were lesser  
included counts.
- If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐

7 Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒

8 Did you appeal from the judgment of conviction? Yes ☐ No ☒

9 If you did appeal, answer the following:

(a) Name of court: \_\_\_\_\_

(b) Docket or case number (if you know): \_\_\_\_\_

(c) Result: \_\_\_\_\_

(d) Date of result (if you know): \_\_\_\_\_

(e) Citation to the case (if you know): \_\_\_\_\_

(f) Grounds raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☐

If "Yes," answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

\_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know) \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket of case number (if you know). \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition Yes ☐ No ☐

(2) Second petition. Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE: PETITIONER'S CONVICTION ON COUNT 5 IS UNCONSTITUTIONAL AND MUST BE VACATED IN LIGHT OF UNITED STATES V. DAVIS.**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner was convicted and sentenced on Count 5 for Use/Carry a Firearm in Relation to a Crime of Violence, based on the associated Count 4 that charged him with Conspiracy to Commit Murder in Aid of Racketeering. At the time, the Count 4 charge was considered to be a crime of violence for purposes of 18 U.S.C. § 924(c)(1)(A) under the "residual clause" of 18 U.S.C. § 924(c)(3)(B). On June 24, 2019, the U.S. Supreme Court ruled in United States v. Davis, No. 18-431, that the residual clause is unconstitutionally vague. Because the offense in Count 4 does not qualify as a crime of violence under the "force clause" [18 U.S.C. § 924(c)(3)(A)], Petitioner is innocent of violating § 924(c)(1)(A). As such, his conviction and the 60 month sentence imposed must be vacated. Given the amount of time Petitioner has served, he should be released immediately.

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available). \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue.

**GROUND TWO:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

**(b) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_





Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

## GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

[illegible]

**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐



(2) If your answer to Question (c)(1) is "Yes," state

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue. \_\_\_\_\_

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

**Petitioner did not raise his claim sooner because it is based on a recent decision by the U.S. Supreme Court that announced a new rule of constitutional law that applies retroactively to cases on collateral review.**

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing: N/A

(b) At the arraignment and plea: Earl G. Kaufman

111 S. Independence Mall East, Suite 755, Philadelphia, PA 19106

(c) At the trial: N/A

(d) At sentencing.

same as above

(e) On appeal: N/A

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future.

\_\_\_\_\_

\_\_\_\_\_

(b) Give the date the other sentence was imposed. \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: vacate his conviction on Count  
5, vacate the 60 month sentence imposed, and order his immediate  
release from custody due to the amount of time served  
or any other relief to which movant may be entitled.

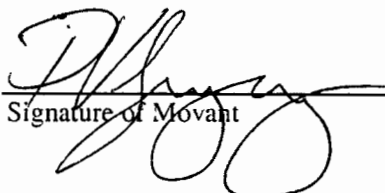
N/A

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion  
under 28 U.S.C. § 2255 was placed in the prison mailing system on July 5, 2019  
(month, date, year)

Executed (signed) on July 5, 2019 (date)

Pedro Velasquez  
Reg. No. 66217-066  
Federal Correctional Institution  
P.O. Box 1000  
Otisville, NY 10963-1000  
Petitioner, pro se

  
\_\_\_\_\_  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PEDRO VELAZQUEZ

66217-066

FEDERAL CORRECTIONAL INSTITUTION OTISVILLE

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↔66217-066↔

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